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No. 614

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

PAUL M. NEHRING,
Defendant-Appellant,

vs.

EDWARD M. GERRITY,
Plaintiff-Appellee.

On Appeal from the Supreme Court of Illinois

JURISDICTIONAL STATEMENT

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UNITED STATES LAW PRINTING CO., CHICAGO 18, ILL. LAfayette 5-6581

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PAGE

INDEX

	PAGE
Jurisdictional Statement	1
Opinion Below	2
Jurisdiction	2
Statute Conferring Jurisdiction	3
Constitutional Provision Involved	3
State Statutory Provisions Involved	3
Cases Believed to Sustain the Jurisdiction	4
Questions Presented	9
Statement of the Case	11
The Questions Are Substantial	12
Finality of the Supreme Court Decisions	13
Conclusion	15
Opinion of the Supreme Court of Illinois	App. 1

AUTHORITIES CITED

Cases

Allen v. Corsano, 56 F. Supp. 169	4, 8
Baldwin v. Morgan, 251 F. 2d 780	8
Bauman v. C.I.T. Corp., 356 Ill. 336 at 339, 190 N.E. 696 at 698	5
Brown v. Bd. of Education, 347 U.S. 483	6
Chambers v. Florida, 309 U.S. 227, 238	4
City of Evanston v. Meyers, 50 N.E. 204, 172 Ill. 266	9

PAGE

Davis v. Gray, 16 Wall 203, 221; 83 U.S. 203, 221 (1872) 7

Dept. of Mental Hygiene v. Kirchner, S.F. 21349, (Jan. 30, 1964) Cal. Sup. Ct. 7

Dick v. New York Life Insurance Co., 359 U.S. 437; 79 S. Ct. 921 7

Dorn v. Geuder, 171 Ill. 362 9

Draper v. Washington et al: 372 U.S. 487 6

Estate of Tetsubumi Yano (1922) 188 Cal. 645, 656-657 (14) 7

Field v. People, 2 Seammon 79 13

Frazier v. Moffatt, 239 P. 2d 123 9

Garfield v. Douglas, 22 Ill. 100 9

Gayle v. Browder, 352 U.S. 903 6

Ghadiali v. Delaware State Medical Society, 48 F. Supp. 789, 790 4

Hamrick v. Bles, 231 F. Supp. 507, 510 9

Hardwicke v. Hurley, 289 F.2d 529, 530 (7th Cir. 1961) 7

Hoeper v. Tax Commission (1931) 284 U.S. 206 7

Holmes v. City of Atlanta, 350 U.S. 879 6

Johnson v. Keating, 17 F. 2d 50, 52 (C.A. 1, 1926) 8

Malone v. Bowdoin, 369 U.S. 643 (1962) 8

Manhattan Co. v. Commissioner, 297 U.S. 129, 134 (1936) 8

Marbury v. Madison, 1 Cranch (US) 137; 2 L.Ed. 69 8, 9

Matter of Flagler, 248 N.E. 415, 420; 162 N.E. 471 9

PAGE

Mayor & City Council v. Dawson, 350 U.S. 877 6

Miller v. Anderson, 269 Ill. 608, 109 N.E. 1048 5

Monroe v. Pape, 365 U.S. 167, 180, 171-187 (1961) 5, 7, 8

Moss v. Jones, 288 F. 2d 342, 344 (6th Cir. 1961) 7

Munn v. Illinois, 94 U.S. 113 (1876) 7

New Orleans City Park Improvement Assn. v. Detiege, 358 U.S. 54 6

New Orleans Waterworks Co. v. Louisiana, 185 U.S. 336; 46 L. Ed. 936; 22 Sup. Ct. Rep. 691 4

People v. Hassakis, 129 N.E. 2d 9 9

Poindexter v. Greenhow, 114 U.S. 270, 29 L.Ed. 185, 193 8

Selico v. Jackson, 201 F. Supp. 475, 477 (D.C. S.D. Cal. 1962) 7

Shafer v. Northside Inn, 36 Ill. App. 2d 441, No. 48681, June 12, 1962 5

Shaw v. Moon et al, 245 Pacific Reporter 318 9

Sparks v. England, (8 Cir. 1940), 113 F. (2d) 579, 582 8

State ex rel. Parker v. Roberds, 155 Kan. 165, 123 P. 2d 806 9

Smyth v. Ames, 169 U.S. 466 7

Tanser v. Checker Taxi Company, 188 N.E. 2d 659 6

PAGE

Turpin v. Lemon, 187 U.S. 51; 47 L.Ed. 70 ..... 4, 9

Vosburgh v. Jameson, 40 Ill. 93 5

Yick WO. v. Hopkins, 118 U.S. 365, 6 Sup. Ct. 1064, 30 L. Ed. 220 ..... 4, 8

Zucht v. King, 260 U.S. 174, 176, 177 8

Miscellaneous

Justice Douglas, "The Right of the People" 157 (1958) 5

Parens Patriae Principle, 44 C.J.S. 48, #3; 67 C.J.S. 624; 31 Words & Phrases 99-101 7

The Act to Enforce the 14th Amendment, U.S. Statutes at Large 7

IN THE

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No.

PAUL M. NEHRING,
Defendant-Appellant,

vs.

EDWARD M. GERRITY,
Plaintiff-Appellee.

On Appeal from the Supreme Court of Illinois

JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the Supreme Court of the State of Illinois, entered on the 24th day of November, 1964, and final judgment entered on the 18th day of March, 1965, affirming an order of state trial court, and submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The decision of the Supreme Court of the State of Illinois is reported at page 20 of the transcript of record and repeated in appendix "A" this document. The state trial court order is on pages 8 and 9 of the abstract of record filed in Illinois Supreme Court. (Abst. pp. 8, 9).

JURISDICTION

(Nature of the State Proceeding) This appellant raised the question in state lower court of the production of a complete stenographic record of proceedings and the certification as to its authentication by the judge who presided over the trial. No success was ever had in securing the entire proceedings and to this day the state reviewing courts have never had in their possession a true and complete stenographic record of trial court testimony. They made decisions and exercised jurisdiction to review the cause notwithstanding. The appellant sought remedies in the Illinois Appellate Court and the Illinois Supreme Court to use their powers to compel the trial court to produce the remainder portions of the stenographic record to augment the partial record already in their possession, but with no success. In so doing the state courts from trial court to Supreme Court ignored such statutes as Ill. Rev. Stats. ch. 110, sec. 50 (2) and ch. 110, sec. 68.1 (4). The appellant was denied his Constitutional Rights to a fair and impartial trial. The appellant, without a true report of proceedings, could not support his allegations in a manner consistent with the 14th Amendment to the Constitution of the United States.

The judgment, or decree, sought to be reviewed was dated and entered on the 19th day of November, 1959, in the state lower court, and it is embodied in the aforesaid

opinion of the Supreme Court of the State of Illinois, there being no separate order, judgment, or decree. An order denying rehearing was entered on the 18th day of March, 1965. The notice of appeal to this court was filed in the Supreme Court of the State of Illinois on the 14th day of June, 1965, and a continuance has been granted on some items until the 27th day of September, 1965.

STATUTE CONFERRING JURISDICTION

The jurisdiction of this court is invoked pursuant to 28 U.S.C. 2104 and 28 U.S.C. 1257 (1) (2) & (3).

U. S. CONSTITUTIONAL PROVISION INVOLVED

U. S. Constitution, Amendment XIV, Section 1:

> "* * * nor shall any State deprive any person of * * * property, without due process of law * * *."

Illinois Constitution, Article VI, Section *18*:

> "* * * has provided by law for the retirement of judges automatically at a prescribed age, and subject to rules of procedure to be established by the Supreme Court and after notice and hearing, any judge may be retired for disability or suspended without pay or removed for cause by a commission composed of one judge of the Supreme Court on complaint of any person* * *" S.H.A. Ill. Rev. Stats., page 150, revised after printing.

STATE STATUTORY PROVISIONS INVOLVED

Ill. Rev. Stats. ch. 110, sec. 201.1 (c).

> "Certification and filing of report of proceedings. The report of proceedings at the trial, consisting of the rulings of the trial judge, the testimony, all other matters upon which rulings were made, and any other

proceedings before the trial, consisting of the rulings of the trial judge, the testimony, all other matters upon which rulings were made, and any other proceedings before the trial judge which the appellant desires to incorporate in the record on appeal, shall be procured * * * for his certificate of correctness, * * *"

Ill. Rev. Stats. ch. 110, sec. 92 (d), S.H.A.

"Draw inferences of fact;"

CASES BELIEVED TO SUSTAIN THE JURISDICTION

The due process clause in the 14th Amendment to the Constitution does not require that the proceedings in a state court should be by a particular mode, but only that there should be a regular course of proceedings in which notice was given of the claim asserted, and an opportunity offered to defend against it.

New Orleans Waterworks Co. v. *Louisiana,* 185 U.S. 336; 46 L.Ed. 936; 22 Sup. Ct. Rep. 691.

Turpin v. *Lemon,* 187 U.S. 51.

Ghadiali v. *Delaware State Medical Society,* 48 F. Supp. 789, 790.

Allen v. *Corsano,* 56 F. Supp. 169.

The ultimate authorities of the U.S. Supreme Court subscribed to the moral question of "means" when they stated or upheld:

"In order to avoid denial of equal-protection of the laws the police power must be exercised reasonably and not arbitrarily." *Yick WO.* v. *Hopkins,* 118 U.S. 365, 6 Sup. Ct. 1064, 30 L.Ed. 220.

As Justice Black said in *Chambers* v. *Florida* (309 U.S. 227, 238):

"* * they who have suffered most from secret and dictatorial proceedings have almost always been the poor the ignorant, the numerically weak, the friendless, and the powerless."

Isn't this a matter of consequence to everyone, as set forth here:

> "If the unfortunate and weak are to be protected, the public opinion of the community, as well as the courts, must be enlightened." *Monroe* v. *Pape,* 365 U.S. 167, 183.

Particularly is the means important when we purport to be a civilized society:

> "The *means* are all-important in a civilized society. It may seem unimportant that a miserable person is forced to confess to a crime. But in the sweep of history, a nation that accepts that practice as normal, . . . a people that exalts the ends over the means have no claim to a position of moral leadership among the nations." As found in Justice Douglas, "The Right of the People" 157 (1958).

Illinois courts have held the presiding judge only has authority legally to certify records and not bystanders as seen here:

> "As observed by the Illinois Supreme Court in *Bauman* v. *C.I.T. Corp.,* 356 Ill. 336 at 339, 190 N.E. 696 at 698. It is the exclusive province of the judge before whom a cause was tried to determine the accuracy of the bill of exceptions presented for his signature. *People ex rel. Vosburgh* v. *Jameson,* 40 Ill. 93. The law makes him the judge of the accuracy and propriety of the act he is called upon to verify, and it is not for other persons to determine its truth." *Shafer* v. *Northside Inn,* 36 Ill. App. 2d 441, No. 48681, June 12, 1962.

> "The transcript of record (stenographic report) affords the means for putting before the reviewing court matters not included in the formal common-law record." *Miller* v. *Anderson,* 269 Ill. 608, 109 N.E. 1048.

> "No claim of privilege can justify withholding of a report made by a stenographer under the auspices and with the facilities of the court." *Tanser* v. *Checker Taxi Company,* 188 N.E. 2d 659.

This court has held such deprivation in the "means" or abuse of procedural due process violates the 14th Amendment as seen here:

> "In the case of *Draper* v. *Washington et al.,* 372 U.S. 487, the court stated, 'by allowing trial judge to prevent petitioners from having stenographic support or its equivalent for presentation of each of their separate contentions to the Appellant tribunal the State denied their rights assured them under the Fourteenth Amendment."

When evidence obviously shows discrimination and denial of equal privileges by a state agency (including a state court or judiciary) inconsistent with the 14th Amendment even the U. S. District Court has jurisdiction and may issue an injunction against the state agency to cease and desist further alleged discrimination.

Brown v. *Bd. of Education,* 347 U.S. 483.
Mayor & City Council v. *Dawson,* 350 U.S. 877.
Holmes v. *City of Atlanta,* 350 U.S. 879.
Gayle v. *Browder,* 352 U.S. 903.
New Orleans City Park Improvement Assn. v. *Detiege,* 358 U.S. 54.

It is abundantly clear that the one reason the legislation was passed was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance, or otherwise; state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges,

and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies.

Monroe v. *Pape,* 365 U.S. 167, 180 (1961).

Davis v. *Gray,* 16 Wall 203, 221; 83 U.S. 203, 221 (1872).

Moss v. *Jones,* 288 F.2d 342, 344 (6th Cir. 1961).

Dick v. *New York Life Insurance Co.,* 359 U.S. 437; 79 S. Ct. 921.

And, it is now well settled that 42 U.S.C.A., Sec. 1983, provides for civil liability in cases involving deprivations, under color of state law, or rights guaranteed by the due process clause of the Fourteenth Amendment.

Selico v. *Jackson,* 201 F. Supp. 475, 477 (D.C. S.D. Cal. 1962).

Monroe v. *Pape,* 265 U.S. 167, 171 (1961).

Hardwicke v. *Hurley,* 289 F. 2d 529, 530 (7th Cir. 1961).

The Act to Enforce the 14th Amendment, U. S. Statutes at large.

Appellant was denied equal protection and privileges consistent with the 14th Amendment, consistent with Federal Policies, consistent with purported state policies, going to extreme bigotry, which reached inhuman treatment; thus, no legal trial was held.

Dept. of Mental Hygiene v. *Kirchner,* S.F. 21349, (Jan. 30, 1964) Cal. Sup. Ct.

Hoeper v. *Tax Commission* (1931) 284 U.S. 206.

Parens Patriae Principle, 44 C.J.S. 48, #3; 67 C.J.S. 624; 31 Words & Phrases 99-101.

Estate of Tetsubumi Yano (1922) 188 Cal. 645, 656-657 (14).

Smyth v. *Ames,* 169 U.S. 466.

Munn v. *Illinois,* 94 U.S. 113 (1876).

Marbury v. *Madison,* 1 Cranch (US) 137; 2 L.Ed. 69.
Zucht v. *King,* 260 U.S. 174, 176, 177.
Baldwin v. *Morgan,* 251 F.2d 780.
Malone v. *Bowdoin,* 369 U.S. 643 (1962).
Manhattan Co. v. *Commissioner,* 297 U.S. 129, 134 (1936).
Johnson v. *Keating,* 17 F.2d 50, 52 (C.A. 1, 1926).
Yick WO v. *Hopkins,* 118 U.S. 365.
Allen v. *Corsano,* 56 F. Supp. 169.
Sparks v. *England,* (8 Cir. 1940), 113 F. (2d) 579, 582.

Where petitioners assert that respondents have been * * * depriving them of rights protected by the Fourteenth Amendment, it is immaterial whether respondents conduct is legal or illegal as a matter of state law, (citing *Monroe* v. *Pape,* 365 U.S. 167, 171-187).

As this court once ruled:

> "And how else can these principles of individual liberty and right be maintained, if, when violated, the judicial tribunals are forbidden to visit penalties upon individual offenders, who are the instruments of wrong, whenever they interpose the shield of the State? *The doctrine is not to be tolerated.* The whole frame and scheme of the political institutions of this country, State and Federal, protest against it. Their continued existence is not compatible with it. It is the doctrine of absolutism, pure, simple and naked; and of communism, which is its twin; the double progeny of the same evil birth." *Poindexter* v. *Greenhow,* 114 U.S. 270, 29 L. Ed. 185, 193 (Emphasis added).

As a Federal Court said of the Equal Protection Clause of the Fourteenth Amendment:

> While the equal protection clause had its origin, and still has its principal application, in the invidious discriminations as to class or race, its reach is not so limited. Individuals deprived of important rights by discriminatory State action can also claim its protection. *Hamrick* v. *Bles,* 231 F. Supp. 507, 510 (U.S. Dist. Ct., N.D. West Virginia, July 16, 1964).

Everyone is entitled an impartial trial and a judgment on fact, proof of fact, and the law.

Marbury v. *Madison,* 1 Cranch (US) 137; 2 L.Ed. 69.

Garfield v. *Douglas,* 22 Ill. 100.

Shaw v. *Moon et al,* 245 Pacific Reporter 318.

Frazier v. *Moffatt,* 239 P. 2d 123.

State ex rel. Parker v. *Roberds,* 155 Kan. 165, 123 P. 2d 806.

City of Evanston v. *Meyers,* 50 N.E. 204, 172 Ill. 266.

Dorn v. *Geuder,* 171 Ill. 362.

People v. *Hassakis,* 129 N.E. 2d 9.

Matter of Flagler, 248 N.E. 415, 420; 162 N.E. 471.

Turpin v. *Lemon,* 187 U.S. 51, 47 L. Ed. 70.

QUESTIONS PRESENTED

1) A trial court judge violated the 14th Amendment to the U. S. Constitution and was shielded from the enforcement provisions of Article VI, Section 18, of the Illinois Constitution against that judge because he was elevated to the Illinois Supreme Court.

2) The state trial court showed discrimination because they ruled that being a civil cause; the appellant is not entitled to a complete transcript of proceedings, denying him the same consideration he would receive if he were appealing a criminal conviction.

3) The trial court of the State of Illinois refused to use its powers to assist the appellant in engaging competent legal counsel when he was attacked by his own former attorney, and all attorneys he contacted refused to take the case. This practice is condemned in criminal cases and this being a civil case the appellant contends that such a deprivation of appropriate counsel is violative of the 14th Amendment and being charged with infractions of rules; should the state courts have waived the strict interpretations of such rules, in particular as to the contempt citation involved?

4) The state lower court, not the judge who presided at that trial violated the equal protection guarantee of due process of law by certifying the stenographic record of proceedings as being a true and complete record, and did so without the knowledge or sanction of the appellant. The record filed contained facts extremely favorable to the appellee and the successful party, and omitted those that would favor the appellant and the question is will this Court tolerate that defiance of the 14th Amendment, or insist on a new trial?

5) Does the fact that the trial court judge of the state court who is elevated to the Supreme Court of the same state allow the assigning of another judge of the lower state court to attest to the authentication of the record which caused delay in this case when the judge's residence, or place of sitting in the Supreme Court, is just a few miles from his former court room.

6) If the trial court judge hearing and presiding over the proceedings covered by the stenograhic record of that hearing is elevated to a high court of same state, does this court interpret the law to say that this condition alone is sufficient to bar that judge from certifying to the authentication of the proceedings only heard by him?

7) When an opinion will be used to damage the reputation of a party, in absence of fact, not supported by record or contrary to the record; can this court give redress to the litigant for this wrong revoking the Illinois Civil Practice Act, Ill. Rev. Stats. ch. 110, sec. 92 (d), and if not, will this court stop this practice of character assassination by invoking the equal protection clauses of the 14th Amendment?

8) Will this court construe in this case; decided on court technicalities; that the circumstances surrounding the appellant preventing his engaging appropriate counsel did cause a substantial injury to the appellant because he appeared *pro se.*

9) When an unusual situation of a party having no success in obtaining appropriate counsel in a civil case, does the court bear the same responsibility to supply counsel as is the practice in criminal suits?

STATEMENT OF THE CASE.

Appellant is a resident of the city of De Kalb, Illinois, in De Kalb County, Illinois. Upon a termination of an Income Tax suit wherein the appellant contested Internal Revenue Service's Commissioner's determination of an income tax deficiency against him in the amount of $15,323.30 for the year 1950, in which the Appellee (a former employee of the I.R.S.) successfully gained a favorable decision for the appellant; caused a complaint to be served on the appellant for fees and he denied making a prior agreement to represent the appellant for $1,500.00 and various out of pocket expenses in the tax suit by raising it to $12,000.00 *plus*? The appellant contends a verbal contract of $1,500.00 was just as much a contract as if it had been written and

alleges the appellee sought to use unethically, the confidential attorney client relationship to avail himself (appellee) of the opportunity to take advantage of his client for additional fees, and sought to intimidate this appellant to pay the additional fees by exaggerating his fees a third time in the trial court obviously to panic the appellant into paying the second claimed fee and avoid a contest of the cause in the courts.

THE QUESTIONS ARE SUBSTANTIAL

Two particular issues arise in this cause which this Court has never squarely faced and they bring forth a third issue:

1). Does the elevation to justice of the State Supreme Court from a position of trial court judge exonerate such judge from the provision of the Art. VI, Section *18* of the Constitution of the State of Illinois.

2) Does the general practice of all courts to differentiate on procedural due process as between criminal and civil cases continue on, or will this court rule money for criminal fines is the same as money due on a contract or a contempt citation.

3) A third issue not clear is: does the enforcement act of the 14th Amendment provide lawful cause for examining the judge whose conduct manifestly obstructs the administration of justice?

This appellant raised the question in the state trial court as to the production of a complete stenographic record of proceedings and the certification as to its authentication by the actual trial court judge who presided over the proceedings. No success was ever had in procuring the entire court report of proceedings and to this day the reviewing courts have never had in their possession a true

and complete stenographic record of trial court of the testimony but rendered decisions and exercised jurisdiction to review the cause, knowing that the appellant sought remedies at law in the Illinois Appellate court and the Illinois Supreme Court to use their powers to compel the trial court to produce the remainder portions of the stenographic record to augment the partial record already in their possession, but without success. In so doing the state courts from the trial court to the supreme court ignored such statutes as Ill. Rev. Stats. ch. 110, sec 50(2) and ch. 110, sec. 68.1(4). The above statutes arising from the Illinois Constitution, Article VI and in relation to conflicts of jurisdiction between trial court and the reviewing court, the court stated the following:

FINALITY OF THE SUPREME COURT DECISIONS

In *Field* v. *People,* 2 Seammon 79, the trial court had failed to adhere to the law as has been promulgated by our Supreme Court, and the Supreme Court on commenting upon that fact uses this language:

> "As he can not accord with this court in the principles laid down he can not apply them. The doctrine before his decision was considered well settled, that when the supreme judicial tribunal of a state had declared what the law was on any point, when the same point came again in litigation, all other courts were bound to conform to its decision.
>
> "A different rule would destroy all stability and uniformity of the rules of law, which is essential to the administration of justice, and the safety of the citizen. If every judge can decide according to his private sentiments, without regard to precedent and authority, there would be as many rules of decision as there are circuits; and the decision of one day would furnish no rule for the decision of the next—

> Who Does Not See that such doctrine is subversive of the fundamental principles of government? It is reversing the order of authority prescribed by the Constitution and law, and rendering nugatory the right of appeal. It will be readily admitted that an erroneous decision ought not to prevail, but who has the right to say so?
>
> "This authority includes the right of supervision and control, and if the Circuit court has it, in reference to a decision of the Supreme Court, upon the same principle a justice of the peace will have it, in reference to the decision of the Circuit court; and one step further will give right of supervision to the parties in the cause; thus resolving all the authority back into original elements. This would be the consequence of carrying out the position assumed."

Referring again to the important issues in this case the appellant has contended continuously in the state courts that the trial judge obstructed the administration of justice by delaying the production of the true and complete transcript of testimony heard by him in his court. And solely because of this the appellant has never been able to procure or approve the true and complete stenographic record of the testimony. In the absence of the cooperation of the original judge to certify the transcript of testimony the appellant was further injured in his due process of law rights when the succeeding trial court judge certified the record as a true and complete record without the appellant having any opportunity to examine it. When the appellant examined the report of proceedings he objected to its use because it is not correct without success, because no trial court hearing was ever held on the matter.

The actions of trial court in delaying the production of the record and orienting the record to speak most favorably for the appellee was criminal conduct on the

part of the trial court judges and is examinable as provided by the Illinois Constitution, Art. VI, section 18.

A serious inconsistency presently exists when in a civil suit the law is not made clear that the appellant shall not be deprived of any records while in criminal suits this is a mandatory provision in the law and cannot be violated. This court should rule that the privileges and restraints in our statutes and invoking the 14th Amendment must be interpreted and enforced uniformly in both civil and criminal cases.

CONCLUSION.

The judgment below should be reversed and the appellant reimbursed his costs and reasonable damages.

Respectfully submitted,

PAUL NEHRING,
Petitioner, Pro Se

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APPENDIX

OPINION OF THE SUPREME COURT OF ILLINOIS

Docket No. 38133—Agenda 2—September, 1964.
Edward M. Gerrity, Appellee, v. *Paul M. Nehring, Appellant.*

Mr. JUSTICE SCHAEFER delivered the opinion of the court:

The circuit court of DeKalb County entered judgment for the plaintiff for $3500 plus interest in an action brought by Edward M. Gerrity against Paul M. Nehring. The defendant appealed to the Appellate Court. On June 25, 1963, that court dismissed the appeal because the record was not filed within the required time, and on July 19, 1963, it denied the defendant's motion to vacate the order of dismissal. On August 26, 1963, the defendant filed a notice of appeal to this court and on December 23, 1963, he filed in this court a document denominated "Appellant's Brief In Support Of Appeal From Judgment Of Appellate Court Dismissing Appeal And Petition For Leave To Appeal."

The plaintiff has filed a motion to dismiss both the appeal and the petition for leave to appeal for want of jurisdiction. The defendant has appeared *pro se* throughout most of these proceedings, and because his contentions were not presented in an orderly manner and because he charged misconduct on the part of the plaintiff, other attorneys, and all of the judges who had anything to do with the case, the motion to dismiss was taken with the case so that a careful examination of the record could be made.

While the only issues before this court stem from the dismissal of the appeal by the Appellate Court, the defendant's arguments cover a wide range. He requested and was granted leave to file a report of the proceedings upon a citation proceeding under section 73 of the Civil Practice

Act, (Ill. Rev. Stat. 1963, chap. 110, par. 73) and thereafter the plaintiff was granted leave to file a certified copy of the report of proceedings at the original trial. We have carefully examined these records, and in view of the charges that have been made by the defendant, we think it is appropriate to say that we have found no indication of misconduct on the part of the plaintiff or any attorney or judge connected with this action.

This action was brought by the plaintiff, an attorney, to recover for legal services that he rendered to the defendant in connection with litigation in the Tax Court of the United States concerning an asserted deficiency of $15,323.30 in the defendant's income tax for 1950. That litigation was conducted successfully by the plaintiff, and after it was terminated he brought this action to recover the unpaid balance of his fee. The case was tried before the Hon. Roy J. Solfisburg, Jr., without a jury, and at the conclusion of the trial, on November 19, 1959, judgment was entered for the plaintiff in the amount of $3500 plus interest and costs. Defendant's motion to vacate the judgment was continued from time to time, and was denied on October 4, 1962.

Defendant filed his notice of appeal to the Appellate Court on October 24, 1962. On December 12, 1962, the circuit court granted an extension of time to February 28, 1963, for filing the record. On February 28, 1963, the circuit court allowed a further extension to March 15, 1963. On March 25, 1963, the Appellate Court allowed a further extension to April 30, 1963. On April 27, 1963, defendant moved for a further extension to June 30, 1963. This motion was denied on May 13, 1963. On June 25, 1963, on plaintiff's motion, the Appellate Court dismissed the appeal because the record had not been filed within the time

prescribed. (Ill. Rev. Stat. 1963, chap. 110, par. 201.1.) Defendant's motion for reconsideration of the dismissal was denied on July 19, 1963.

An appeal as of right to this court is available when a constitutional question has arisen for the first time in the Appellate Court. It appears to be the theory of the defendant that the Appellate Court's refusal to grant a further extension for filing the record, and its order dismissing the appeal, deprived him of due process of law. Judge Solfisburg, who tried the case, became a member of this Court in June of 1960, and thereafter he was without authority to certify to the correctness of the report of proceedings. But contingencies of this kind are not unusual, and the rules have anticipated and provided for them. The report of proceedings is required to be submitted "to the trial judge or his successor for his certificate of correctness, or if that is impossible because of the absence from the district, sickness or other disability of the judge, then to any other judge of the court * * *." (Ill. Rev. Stat. 1963, chap. 110, par. 201.1.) No circumstances have been shown by the defendant that would convert the Appellate Court's routine application of its rules into a violation of his constitutional rights.

The motion to dismiss the appeal as of right is granted. Defendant's brief will be treated as a petition for leave to appeal (Sup. Ct. Rule 32(6), 28 Ill.2d XXXV,) and so treated it is denied.

Appeal dismissed; petition for leave to appeal denied.

Mr. JUSTICE SOLFISBURG took no part in the consideration or decision of this case.